



Fast Track Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-10
Regulation title	Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers and the Adoption or Amendment of Regulations
Action title	Updating Procedural Rules and Public Participation Guidelines
Date this document prepared	August 11, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Alcoholic Beverage Control Board is proposing several amendments to the regulation governing its procedures in hearings and public participation in the promulgation of regulations. Since the last action adopting or amending the regulation, various reorganizations within the agency have abolished positions referenced or re-assigned certain duties. Several of the changes proposed involve correcting obsolete references to such eliminated or re-named positions. Other amendments eliminate unnecessary provisions that prohibit the chief hearing officer from presiding over cases in which a consent settlement offer was extended, and require the secretary to pre-screen complaints arising under the Beer and Wine Franchise Acts. Amendments to the board's public participation guidelines eliminate the current requirement of annual rulemaking, and recognize advancing technology by providing for e-mail notification of regulatory activities and posting notice of regulatory actions on the Virginia Regulatory Town Hall.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On August 1, 2006, the Alcoholic Beverage Control Board adopted amendments to 3 VAC 5-10, Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers and the Adoption or Amendment of Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act, and to hold hearings and make case decisions on license applications, violations of the Board's regulations by licensees, and disputes arising under the Wine and Beer Franchise Acts. The Code mandates that the Board promulgate regulations and hold hearings, but details of the procedural rules are left to the Board's discretion.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This action is intended to revise the Alcoholic Beverage Control Board's procedural rules for hearings held by hearing officers and the Board, to eliminate obsolete references, streamline procedures in cases arising under the Wine and Beer Franchise Acts, incorporate by reference the Supreme Court's discovery rules in franchise cases, and modernize public participation guidelines for the adoption or amendment of regulations by providing for use of the features of the Virginia Regulatory Town Hall for giving notice to the public of regulatory actions.

The goals of this regulation are:

1. To provide an efficient process for the adjudication of contested license applications, disciplinary cases, and disputes under the Wine and Beer Franchise Acts, while protecting the public health, safety, and welfare.
2. To provide a reasonable opportunity for public input in the formation, amendment, or repeal of agency regulations.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed changes do not involve any material change in policy or procedure. They merely replace outdated references to agency positions, eliminate unnecessary process, and recognize new methods of public participation in the regulatory process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The Alcoholic Beverage Control Board is recommending this regulation be amended in several minor respects. Staff review discovered several references to positions or divisions of the agency which no longer exist. Amendments will be proposed to correct these obsolete references. In addition, the Board recommends that 3 VAC 5-10-400 be rewritten to incorporate Part 4 of the Rules of the Virginia Supreme Court by reference. The current section, which takes up some 20 pages in the Administrative Code, is closely modeled after the Supreme Court discovery rules. Substitution of the reference will reduce the text of the regulations of the Board by almost 20 percent, while referring practitioners to a rule with which they are already familiar. A screening process for cases arising under the Wine and Beer Franchise Acts will be eliminated as an unnecessary delay. A provision which prohibits the chief hearing officer from presiding over any case in which a consent settlement offer was submitted is recommended for deletion as unnecessary. The Board will also proceed with amendments to its public participation guidelines to incorporate the use of new electronic technologies, such as posting actions and meetings on the Regulatory Town Hall, and the use of the Town Hall's mailing list capabilities to provide notice.

In 3 VAC 5-10-40, 3 VAC 5-10-60, and 3 VAC 5-10-130, the term "Administrative Hearings Section" would be replaced with "Hearings and Appeals Division".

In 3 VAC 5-10-50, "Division of Enforcement and Regulation" would be replaced with "Bureau of Law Enforcement Operations".

In 3 VAC 5-10-150, the last sentence in subsection A would be deleted.

In 3 VAC 5-10-230, "deputy department director for regulation" would be replaced with "Director, Bureau of Law Enforcement Operations", and "Division of Enforcement and Regulation" would be replaced with "Bureau of Law Enforcement Operations".

In 3 VAC 5-10-360, after the first sentence, the remainder of the section would be deleted.

In 3 VAC 5-10-400, the majority of the text would be replaced with language adopting the discovery rules of the Virginia Supreme Court by reference.

In 3 VAC 5-10-480, in the second sentence of subsection B, the language "but shall be initiated

at least once each calendar year" would be deleted, and references to the use of internet technology, such as the Regulatory Town Hall, to provide notice of regulatory actions would be added.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no particular advantages or disadvantages to the public associated with this action. The changes do not represent any material change in regulatory policy. The primary advantages to the agency or the Commonwealth are (1) deletion of obsolete references, and (2) reduced costs for reproducing the agency's regulations due to incorporation by reference of the Supreme Court discovery rules. There are no disadvantages to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5)

the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Procedural rules and public participation guidelines are necessary to the efficient exercise of the Board's regulatory functions. There are no adverse impacts on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Alcoholic beverage manufacturers, wholesalers, and retailers will primarily be affected, as well as any members of the public interested in alcoholic beverage regulation.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 14,000 establishments licensed by the board. It is estimated that at least 95% of these would meet the definition of small business.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Other than the recommended amendments to the regulation, the Board did not identify any alternatives for achieving the purpose of the existing regulation. Procedural rules and public participation guidelines are necessary to the efficient exercise of the Board's regulatory functions.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not expected that this regulatory action will have any impact on the institution of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-10-40		Communications regarding hearings addressed to “Administrative Hearings Section”	“Administrative Hearings Section” revised to “Hearings and Appeals Division”, to reflect change in agency unit name
3 VAC 5-10-50		Complaints against licensees directed to “Division of Enforcement and Regulation”	“Division of Enforcement and Regulation” revised to “Bureau of Law Enforcement Operations”, to reflect change in agency unit name.
3 VAC 5-10-60		Motions for continuances addressed to “Administrative Hearings Section”	“Administrative Hearings Section” revised to “Hearings and Appeals Division”, to reflect change in agency unit name
3 VAC 5-10-130		Motions prior to hearing addressed to “Administrative Hearings Section”	“Administrative Hearings Section” revised to “Hearings and Appeals Division”, to reflect change in agency unit name
3 VAC 5-10-150		Chief Hearing Officer is precluded from presiding over any case in which a consent settlement offer is	Provision repealed as unnecessary. Most consent settlement offers today are mandated by regulations and do not involve any discretion of the chief hearing officer.

<p>3 VAC 5-10-230</p>		<p>extended. “Deputy Department Director for Regulation” may represent the agency in administrative hearings</p>	<p>“Deputy Department Director for Regulation” revised to “Director, Bureau of Law Enforcement Operations”. Old reference is to an abolished position.</p>
<p>3 VAC 5-10-360</p>		<p>Secretary reviews complaints of violations of the Beer and Wine Franchise Acts to determine whether reasonable cause exists to believe a violation has occurred prior to holding a hearing</p>	<p>Provision repealed as unnecessary. Complainant is entitled to a hearing whether or not Secretary believes reasonable cause exists.</p>
<p>3 VAC 5-10-400</p>		<p>Detailed rules for discovery in cases arising under the Beer and Wine Franchise Acts are provided</p>	<p>Reference is made to Part Four of the Rules of the Supreme Court of Virginia. The current rules are taken almost verbatim from the Supreme Court rules, so incorporating them by reference simplifies and shortens the regulation.</p>
<p>3 VAC 5-10-480</p>		<p>Rulemaking process shall be initiated at least once each year Mailing list prepared by the secretary “in conjunction with the deputy department director for regulation” Notices distributed to persons on mailing list</p>	<p>Provision eliminated. Current regulatory process takes longer than a year. Board can still initiate new regulatory process at any time. Reference to deputy department director eliminated. Position no longer exists. Electronic mail and posting on Regulatory Town Hall added as additional forms of notice</p>

Enter any other statement here